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May 17, 1996

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Office of the Secretary
Federal Communications Commission
1919 M. Street, N.W., Room 222
Washington, D.C. 20554

Re: In the Matter of Implementation of the Local Competition Provision in
the Telecommunications Act of 1996

Enclosed you will find the original and 16 copies of KCPL's comments in the above-captioned docket. Please bring this filing to the Commission's attention.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Michael A. Rump", written over a horizontal line.

Michael A. Rump

cc: Janice Myles - Common Carrier Bureau

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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In the Matter of)	
)	
Implementation of the Local Competition)	CC Docket No. 96-98
Provision in the Telecommunications Act)	
of 1996)	

**COMMENTS OF
KANSAS CITY POWER & LIGHT COMPANY
ON ACCESS TO RIGHTS-OF-WAY**

Kansas City Power & Light Company ("KCPL") submits the following comments on the provisions of Section 224 of the Telecommunications Act of 1996 (the "Act"), regarding Access to Rights-of-Way.

Background

KCPL is an electric utility authorized to transact business in Missouri and Kansas and supplies electric power to over 430,000 residential, commercial and industrial customers in and around the metropolitan Kansas City area. As an electric utility doing business in Missouri and Kansas, KCPL is regulated by both the Missouri Public Service Commission and Kansas Corporation Commission, and is required by state law¹ to provide safe, adequate and efficient electric service to its customers.

¹ In Missouri pursuant to § 393.130 RSMO, and in Kansas pursuant to K.S.A. 66-101b.

**Nondiscriminatory Access
and Insufficient Capacity Issues**

a. Utility Poles

Both the Missouri Public Service Commission² and Kansas Corporation Commission³ have adopted the National Electrical Safety Code ("NESC") as the safety standard for overhead and underground electric and communication lines. KCPL's overhead electric distribution system consists of uninsulated wire conducting up to 13,200 volts of electricity. For safety purposes, the NESC establishes minimum clearance standards for such electric lines. These standards include vertical clearance above the ground and vertical clearance between electric and communication lines. These clearance requirements will impact both the nondiscriminatory access and insufficient capacity issues with respect to utility poles. Access to poles and/or costs of access are impacted by the height of existing poles and number of attaching entities.

KCPL has joint use and/or pole attachment agreements with the incumbent Local Exchange Carrier and Cable Television Companies ("CATV"). These agreements require the attaching entities to comply with NESC guidelines. If there is insufficient space on utility poles for an attachment, i.e., not enough room for above ground clearance and space between the various lines, the attaching entity has the option to pay for taller poles and the cost of transferring existing attachments (LEC, CATV and/or KCPL) to the new poles. Accordingly,

² The Missouri Public Service Commission adopted the 1993 edition of the NESC by reference in 4 CSR 240-18.

³ The Kansas Corporation Commission adopted the 1990 edition of the NESC by reference in K.A.R. 82-8-101.

the first entity to attach will not necessarily incur the same costs or have the same access as a subsequently attaching entity.

While Kansas and Missouri do not directly regulate pole attachments, as contemplated by Section 224(c) of the Act, adoption of the NESC in both states does impose certain safety related limitations and restrictions on the use of utility poles. KCPL hopes that the FCC will consider this existing form of state regulation when developing rules for pole attachments.

b. Underground Facilities

Access to underground facilities such as duct banks or conduit is impacted by the limited space available, safety and reliability concerns. A recent partial survey of KCPL's underground conduit system showed approximately 25% to be fully utilized or inaccessible. There was no room for additional electric lines, let alone communication lines. In certain areas of Kansas City (downtown is one such area), the electrical facilities are all underground. In these areas there are no poles to attach to. If an entity desires to occupy a duct or conduit and there is no space available, they would have to construct their own duct or bear the cost of having KCPL install a new duct. Since there is limited space available, the first entity gaining access to these underground facilities may have an advantage.

KCPL also has safety related concerns over access to manholes in its underground system. Numerous high voltage lines (up to 13,200 volts each) are spliced together in a confined space. KCPL would prefer that its personnel have sole access to its manholes. An excess length of communication line can be placed in each manhole, permitting KCPL personnel to access the manhole and retrieve the communication line, where it can be accessed

above ground by telecommunications personnel. At a minimum, KCPL would require its personnel to be present while work on communication lines in manholes was underway, and would request reimbursement for the labor costs related to this oversight. Access to manholes by persons not familiar with KCPL's electrical system also raises reliability concerns, since it increases the likelihood of an interruption in electrical service to KCPL customers served by circuits in the manholes.

c. Reservation of Future Capacity

KCPL monitors and reviews the demands placed upon its electrical system. This is done for a variety of reasons, including the need to plan for future construction and expansion of facilities. Such records should demonstrate with reasonable certainty the need to reserve space on poles or in conduit for future electrical circuits. Other reasons may also require the reservation of space. As previously noted, KCPL is obligated by statute to provide safe, adequate and efficient electric service to its customers. The planning and construction of overhead and underground facilities, and reservation of space on or in such facilities, is in response to this obligation.

KCPL would propose that deference be given to decisions made by utilities regarding the reservation of space for future use. Electric utilities could be required to present *prima facie* evidence for the need to reserve space for future use. If a telecommunications carrier elects to dispute the reservation of space, it should have the responsibility of establishing that the reservation of space is not reasonable or necessary.

d. Use of Easement and Public Rights-of-way

KCPL uses a combination of private easements and public rights-of-way for the location of its facilities. When KCPL obtains private easements, the purpose of the easements are for electric power lines and related facilities. KCPL does not typically obtain easements for the purpose of providing telecommunications services. Entities wishing to attach communications lines to poles or locate lines in ducts crossing private easements will be required to seek approval from the landowner. When KCPL locates facilities on public rights-of-way, i.e., along public streets and highways, it does so pursuant to franchises with cities in which KCPL transacts business. Entities wishing to attach to poles or gain access to ducts located on public rights-of-way will be required to seek approval from the cities involved.

Notice of Modification to Poles or Ducts

The first step in providing notice with regard to the modification of poles or ducts is to determine which entities have attachments which will be effected. It would be helpful to require the identification of facilities attached to poles or located in ducts. KCPL has pole attachment agreements with numerous CATV companies. These companies provide cable television service in many different cities. It is often difficult to determine which company owns an attachment. In a recent discussion on this issue, a comment was made that the only way to determine which CATV company owned an attachment, was to cut the cable and see who showed up to fix it. Tags or decals on the cable would be a more appropriate manner of identification.

Allowance should be made for emergency modifications. Severe weather and errant motor vehicles frequently cause unplanned modifications to poles. Where modifications are planned, ten (10) business days notice should be sufficient.

One of the most frequent reasons for modification of poles and conduit is related to public improvements undertaken by cities. If KCPL facilities are located in public rights-of-way and a public improvement requires relocation of the facilities, KCPL bears the cost of moving its facilities. Any entities attached to that pole should likewise bear the cost of relocating.

Costs

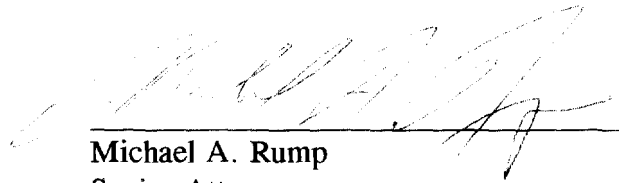
When formulating rules regarding costs, it is important to take into consideration all of the costs KCPL incurs with regard to utility poles. These costs are not limited to purchasing poles and planting them in the ground. KCPL inspects poles for damage by insects, fungus, etc. Poles are treated for protection from these problems and to extend their useful life. All attaching entities benefit from KCPL's line clearance (tree trimming) activities. KCPL also incurs expenses related to insuring against and defending claims arising from collisions between motor vehicles and utility poles. It is our hope that the rules regarding allocation of costs take into consideration the true cost of owning and maintaining utility poles.

KCPL is not in favor of offsetting costs incurred by attaching entities with the revenue received by KCPL from pole attachment fees. The concern already exists that the Act constitutes a taking of KCPL's private property without payment of full compensation. In our view, KCPL and its customers are subsidizing CATV companies and fledgling

telecommunications carriers. Requiring us to offset costs incurred by attaching entities with revenues from pole attachment fees only adds insult to the injury already perceived.

Respectfully submitted,

Kansas City Power & Light Company

A handwritten signature in dark ink, appearing to read "Michael A. Rump", is written over a horizontal line.

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